



PACDL

Pennsylvania Association of
Criminal Defense Lawyers

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December 30, 2009

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Honorable Pamela Pryor Dembe
President Judge
Philadelphia Court of Common Pleas
City Hall, Suite 386
Philadelphia, PA 19107

RE: December 17, 2009 Letter to Court Appointed Counsel

Dear Judge Dembe:

I am writing to you in my capacity as the President of the Pennsylvania Association of Criminal Defense Lawyers. As I am certain that you are aware, PACDL represents the interests of private, court appointed, and public defender criminal defense attorneys throughout the Commonwealth of Pennsylvania. I am writing specifically to address the issues that you have raised in your December 17, 2009 correspondence to our Philadelphia Court Appointed Criminal Defense Counsel, your unfortunate comments in a recent newspaper article authored by Nancy Phillips and John Sullivan of the Philadelphia Inquirer, as well as your statements during an interview for National Public Radio. While I certainly understand the need to encourage all members of our criminal justice system to work expeditiously toward just resolutions in each and every criminal case, it was disconcerting to learn through statements to the media that court appointed criminal defense lawyers were being targeted for public scrutiny as a special class within the Philadelphia criminal justice system.

Given the recent series of articles in our local newspapers concerning the alleged failings and shortcomings of our criminal justice system in Philadelphia, it would seem that a number of entities could be criticized for the potential delay in disposing of criminal cases. Unfortunately, your most recent letter, as well as your public comments to the media, only targeted court appointed defense counsel and their contributions to our criminal justice system. PACDL feels that it is not only unfair, but also wrong, to target criminal defense attorneys for the potential failings within our Philadelphia system of justice. The lack of judges to hear cases, the failure to have prisoners transported to court, the excessive length of time between

court listings, as well as a host of other factors have a direct impact on the ability of our criminal justice system to expeditiously resolve cases. Your Honor's public comments on this issue appear to ignore the fact that every day in Philadelphia citizens are falsely accused of engaging in criminal activity and those individuals suffer from delays in seeking justice through our court system. Your Honor's public comments also seem to ignore the fact that in many cases criminal defense attorneys and their clients wish to exercise the defendant's constitutionally guaranteed right to a speedy trial only to be rebuffed by the prosecution's ability to seek and obtain continuance after continuance in the hope of securing the attendance of police and civilian witnesses. With all due respect, Your Honor's public statements lay the blame for delays in the Philadelphia criminal courts at the feet of the private criminal defense bar, yet that is simply an incorrect assertion and an unwarranted criticism.

While there are many situations in which criminal defense attorneys request continuances, let us not forget that members of the judiciary act to grant those requests. In addition, we cannot overlook the fact that members of the District Attorney's Office routinely request continuances at the preliminary hearing and trial levels when their witnesses, both civilian and law enforcement, fail to appear in court to testify. Moreover, there are many instances throughout the year when courtrooms have their entire list of cases continued based on the absence or late arrival of the presiding judge. Perhaps a letter and a public statement to the press should have been submitted with regard to the failings of Assistant District Attorneys in timely prosecuting matters before the judges of our Municipal Court and the Court of Common Pleas. Perhaps it would have been prudent to also mention the fact that police officers routinely fail to appear in court despite the fact that they have been subpoenaed to come and testify. If there is a failing within our Philadelphia Criminal Justice System to adequately address criminal cases in a timely fashion, then blame can be leveled at any number of parties including prosecutors, police, criminal defense attorneys, court staff, court administration, and even the judiciary.

It was fundamentally unfair for Your Honor to publically chastize those hard working and grossly underpaid court appointed criminal defense lawyers for a problem that has not been created by those individuals. The plain fact is that working faster does not mean that an attorney will work better or that the ends of justice will be satisfied by an expeditious resolution to a case. An unprepared or under-prepared criminal defense attorney cannot carry out his or her obligations under the United States and Pennsylvania Constitutions. Without having an adequate opportunity to develop his or her clients' defenses and to pursue all avenues that may benefit that client within our system of justice, counsel cannot fulfill their constitutional obligations to their clients. Additionally, it would seem that Your Honor might consider that in our criminal justice system, especially at the

preliminary hearing level, judges often employ the “three strikes and you are out” procedure by giving the District Attorney’s Office three consecutive court listings, spanning many months, to bring their cases to court before granting a dismissal for lack of prosecution. Such a procedure certainly serves to delay the resolution of a criminal case, yet no public proclamation from the President Judge has been made criticizing this practice which serves to benefit the prosecution, especially in those cases where the defendant languishes in custody at one of our many over-crowded county prisons.

If the Philadelphia Criminal Justice System wants its court appointed criminal defense attorneys to work “faster”, then perhaps it is also time to address the issue of how individuals who are charged with defending the fundamental liberty interests of the accused in our City, and within our Commonwealth, are paid at such a ridiculously low rate. The plain fact is that court appointed criminal defense lawyers are not fairly compensated for the time, effort, and attention that must be given to each criminal defendant to which these attorneys have been assigned. Given the way our current court appointment system operates, it is certainly not in the interest of a criminal defense attorney to drag out a criminal case because that lawyer does not get paid, even the most meager sum of money, until the particular case that has been assigned is resolved. In those cases where criminal defense attorneys are working long hours on court appointed matters, by diligently investigating their client’s claims and defenses, that lawyer is losing money each and every minute that he or she provides the critical and necessary constitutional functions of criminal defense counsel. It should be noted that this same group of dedicated attorneys that Your Honor has singled out for public criticism, were the same court appointed lawyers who were expected to work day in and day out during the recent budget crisis without any compensation. Court appointed criminal defense attorneys in Philadelphia worked for months without being paid for their professional efforts, yet Your Honor and our court system fully expected and required that these attorneys continue to work so that indigent defendants could be represented and so that the Philadelphia criminal courts did not come to a grinding halt.

As the voice for criminal defense attorneys in this City and throughout this Commonwealth, the Pennsylvania Association of Criminal Defense Lawyers takes issue with Your Honor’s letter of December 17, 2009 to Philadelphia Court Appointed Counsel, as well as the inaccurate and unnecessary public commentary regarding this letter that was presented by Your Honor in the Philadelphia Inquirer on December 28, 2009 and on Nation Public Radio on December 29, 2009. As the President of PACDL, I would invite Your Honor to open a dialogue with members of the Philadelphia criminal defense bar so that we can discuss these issues and work toward the resolution of any problems that may exist within our criminal justice system. Additionally, I would encourage Your Honor to consider publically

addressing this issue so that everyone is aware that the allegations of problems within our criminal justice system cannot be leveled solely at criminal defense lawyers or court appointed criminal defense lawyers in this City. It would only seem fair for the President Judge of the Philadelphia Court of Common Pleas to accurately inform the public about the fact that delays in our justice system exist based upon the actions of numerous parties including police, prosecutors, and even judges.

Thank you for Your Honor's kind cooperation and consideration in this matter. If Your Honor should have any questions or concerns regarding any of the information contained herein, please feel free to contact my office.

Respectfully yours,



MICHAEL J. ENGLE
President of PACDL

MJE/

cc: Nancy Phillips, *Philadelphia Inquirer*
John Sullivan, *Philadelphia Inquirer*
Ronnie Polaneczky, *Philadelphia Dailey News*
Peter Hall, *The Legal Intelligencer*